STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS DWAYNE NEWSON,

Defendant-Appellant.

UNPUBLISHED
February 23, 2010

No. 289646
Wayne Circuit Court
LC No. 08-009866-FC

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a bench trial, of assault with intent to do great bodily harm less than murder, MCL 750.84; carrying a concealed weapon (CCW), MCL 750.227; and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11, to concurrent prison terms of 34 months to ten years for the assault conviction and two to ten years for the CCW conviction, and to the mandatory consecutive two-year term for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The sole witness at the bench trial was the 65-year-old complainant, who testified that he and defendant became involved in an argument over whether defendant could issue orders to the complainant's 40-year-old, mentally disabled daughter. According to the complainant, this argument occurred as he stood on the front porch of his house and defendant stood by his car, which was parked at the curb. When the complainant told his daughter to not listen to defendant and to come to him instead, defendant pulled a revolver out of his pocket and threatened to shoot the complainant if he did not stop interfering. The complainant reacted to this threat by grabbing a section of wood (described as either a section of a two-by-four board or a three-foot-long and three-inch-wide stick) that he kept by the door for protection purposes and starting to walk toward defendant. When defendant pointed the revolver at the complainant, the complainant stopped by his front steps, which were located about 15 or 20 feet away from where defendant was standing next to his car. From this stopped position, the complainant again told his daughter to come to him instead of defendant. Defendant told her not to go and then fired the revolver one time at the complainant, striking him in the abdomen. As the complainant looked at his nonfatal wound, defendant threatened to shoot him a second time if the complainant's daughter did not get into defendant's car; she did enter the car, and defendant then drove away. In cross-examination, the complainant's testimony was slightly different in that he stated that defendant pulled out the revolver as the complainant approached him with the section of wood and that he

(the complainant) stopped when he saw the revolver. Before entering its verdict, the trial court first rejected defendant's claim of self-defense.

Defendant argues that the prosecution failed to prove beyond a reasonable doubt that defendant did not act in self-defense. A defendant may claim he acted in self-defense where, at the time of the offense, "he honestly and reasonably believe[d] that he [was] in imminent danger of death or great bodily harm and that it [was] necessary for him to exercise deadly force." *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002); see also MCL 780.972(1). A claim of self-defense normally "requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat." *Riddle*, 467 Mich at 119. "Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). A prosecutor may meet this burden by presenting sufficient evidence for a reasonable trier of fact to conclude, beyond a reasonable doubt, that the defendant's belief of imminent danger was either not honest or was unreasonable. See *id*. When deciding whether there was sufficient evidence to support a conviction, this Court reviews the record de novo. See *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002).

Viewing the evidence in the light most favorable to the prosecution, defendant pulled a revolver out of his pocket during a verbal confrontation with the complainant and the complainant grabbed a large stick and advanced toward defendant. The complainant stopped 15 or 20 feet away from defendant when defendant pointed the revolver at him and told his daughter to come to him instead of defendant. It was at this point that defendant shot the complainant, who had stopped his advance and was standing in place, and who was making no threats against defendant. Furthermore, defendant was standing next to his car and, if he had believed himself to be in imminent danger of death or great bodily harm, had other options available to him to protect himself other than shooting the complainant, such as seeking refuge inside his vehicle or leaving the scene by driving away. Finally, the fact that, after firing the first shot, defendant threatened to shoot again unless the complainant's daughter complied with his directives indicated that defendant's shooting was designed to impose his will through force rather than defend himself from imminent danger. Based on this evidence, the trial court could conclude, beyond a reasonable doubt, that defendant's belief that the use of deadly force was necessary under the circumstances was either not honest or unreasonable. Therefore, the prosecution presented sufficient evidence to disprove that defendant acted in self-defense.

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray